

REMARKS

The Applicant respectfully acknowledges the phone conference granted to the Applicant's undersigned attorney by Examiner Ula Ruddock on September 3, 2003. The Applicant's attorney and Examiner Ruddock discussed the Office Action of May 7, 2003, including the cited references. Suggested claim amendments were also discussed, including an amendment directed to the alignment of seal netting strands with a heat sealing element. While no formal agreement as to allowability was reached, Examiner Ruddock stated that the discussed amendments—which have been incorporated into the claims—would move the present case toward allowability.

Claims 13-26 remain in this application, and claims 27-33 have been newly added. Claims 1-12 were previously canceled without prejudice.

Claims 13-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,285,998 to Thibodeau in view of U.S. Patent No. 4,348,445 to Craig.

Obviousness requires that all the limitations of a claim must be taught or suggested by the prior art. M.P.E.P. § 2143.03 (citing *In re Royka*, 490 F.2d 981, 985, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974)). A *prima facie* case of obviousness requires three basic criteria:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.

M.P.E.P. § 2143 (citing *In re Vaeck*, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991)).

Although a prior art reference may be modified to meet the claimed limitation, the resultant modified reference is not obvious unless the prior art also suggests or motivates the desirability of the modification. *In re Mills*, 916 F.2d 680, 682, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990) (citing *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984)).

Obviousness cannot “be established using hindsight or in view of the teachings or suggestions of the invention.” *Ex parte Maguire*, 2002 WL 1801466, *4 (Bd. Pat. App. & Inter. 2002) (Appendix F) (quoting *Para-Ordnance Mfg. Inc. v. SGS Importers Int’l Inc.*, 73 F.3d 1085, 1087, 37 U.S.P.Q.2d 1237, 1239 (Fed. Cir. 1995), *cert. denied*, 519 U.S. 822 (1996)).

The present invention is primarily directed to the provision of seal netting strands having wider cross-sections than other netting strands to facilitate sealing of netting strands to opposing film structures. The provision of wider sealing netting strands allows for easier alignment of the sealing strands at the time of sealing and also allows for a stronger seal. The materials and methods of the present invention are distinguished from the materials and processes disclosed in both Thibodeau and Craig. The Office Action cites no discussion in either Thibodeau or Craig indicating that certain netting strands might be sized for ease of sealing to an opposing structure.

In Thibodeau, a net 14 is heat-sealed to a film 12, and may be sandwiched between two layers of film 12, as shown in FIG. 2 of Thibodeau. Thibodeau does not disclose or suggest that the structure of the sealed portion of the net 14 is any different from the structure of any other portion of the net 14. The strands of the netting that happen to be sealed in Thibodeau are equivalent to all other netting strands.

Craig discloses a netting layer 14 that is bonded to a film 12, as shown in Craig at FIG. 1. The netting layer 14 has main filaments 16 and tie filaments 18 at right angles to the main filaments 16. The tie or connecting filaments 18 are smaller than the main filaments 16, as described at column 1, lines 55-61 of Craig. Every main filament 16 and every tie filament 18 is bonded to a film 12. Thus, Craig does not disclose the bonding of selected filaments to an opposing film or to an opposing film structure, but rather discloses the overall bonding of a netting structure to an underlying film.

Neither Thibodeau nor Craig, nor the combination of the two, discloses or suggests that netting strands are positioned or sized for selective sealing of netting strands to an opposing film or netting structure. Further, neither reference—either standing alone or in combination—teaches or suggests the alignment of a seal netting strand with a heat sealing element.

Claim 13 has been amended to point out that only seal netting strands are sealed to opposing film structures. For at least the reason that neither Craig nor Thibodeau—either alone or in combination—discloses or suggests the selective sealing of wider sealing strands to any film or netting structure, claim 1 is believed to be in condition for allowance and action toward that end is earnestly solicited.

Claims 14-20 depend from claim 13 and are believed to be in condition for allowance for at least the reason that they depend from an allowable base claim.

Further, regarding claim 16, the Office Action does not refer to any reference that discloses or suggests that a shallower strand may be provided as a sealing netting strand, as claimed in claim 16. Claim 16 is thus believed to be in condition for allowance.

Regarding claim 21, the Office action does not cite any reference which discloses or suggests that a netting strand is sealed to an opposing netting strand, as claimed in claim 21. Rather, in both Craig and Thibodeau, nets are attached to films. Claim 21 is believed to be in condition for allowance.

Claims 22 through 26 depend from claim 21 and are believed to be in condition for allowance for at least the reason that they depend from an allowable base claim.

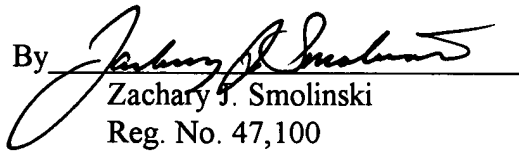
Claim 27 depends from claim 13 and is directed to seal netting strands having shallower cross-sections than standard netting strands.

Claims 28-30 are newly added and are directed to net-reinforced film structures in which seal netting strands have wider and shallower cross-sections than standard netting strands. Claims 28-30 are believed to be in condition for allowance and action toward that end is respectfully solicited. Claims 31-33 are newly added and are directed to embodiments in which the film structures being heat-sealed are moved parallel to a length of a heat sealing element.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

A Petition for Extension of Time is enclosed with authorization for fees to be deducted from the Jenkins & Gilchrist, P.C. Deposit Account No. 10-0447, Order No. 47097-00052. Should any additional fees be required (except for payment of the issue fee), the Commissioner is authorized to deduct the fees from Jenkins & Gilchrist, P.C. Deposit Account No. 10-0447, Order No. 47097-00052.

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